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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 216.

ANDREW GLEASON, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 23, 1885.

pressed by this court on page 444 of 98 U. S., in the case of the Abbotsford, and on page 570 of 113 U. S., in the case of Brown *v.* United States. See also U. S. *v.* Johnson, 124 U. S., 236.

In urging this construction we are not going so far as Lord Hale when he said that the Court should be "curious and subtle to invent reasons and means" to carry out the clear intent of the law-making power; for if it should be held that the words, "and report the same to Congress," means to report them for any purpose other than that for which final judgments are reported to Congress, the construction is obnoxious to the decision in Gordon's case, since "for adjudication according to law" can only mean a final judgment: And, moreover, some construction of the words, "and report to Congress," must be adopted, which leaves room to satisfy and exemplify the meaning of the other words, "*for adjudication according to law*," since their true and indeed only meaning is not open to question.

To summarize the proposition then, the use of the words, "*for adjudication according to law*," which can only mean a final judgment, excludes absolutely under Gordon's case any construction on the words, "and report the same to Congress," looking to a further investigation or examination of the merits of the case, and it follows inevitably that the only construction to be adopted is, that the final judgment is to be reported to Congress (according to the provisions of Sec. 1059, R. S.) for an appropriation. And more than that, this provision for a report to Congress indicated a purpose that the case was not to be appealed to this Court, but that the work of the Court of Claims should be final just as that of the auditor, had been in the case of the Porters.

WM. E. EARLE,
JAMES L. PUGH, JR.,
Att'ys for Appellees.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 1, 1887.

1 I.—*Petition. Filed August* 25, 1880.

In the Court of Claims.

ANDREW GLEESON
vs.
THE DISTRICT OF COLUMBIA. } No. 61.

To the honorable judges of the United States Court of Claims:

Your petitioner respectfully represents that previous to the date of the certificates herein mentioned he entered into contracts with the Board of Public Works of the District of Columbia for grading and improving and work on the streets (named in the certificates) in the city of Washington, District of Columbia, and his accounts were audited and allowed and certificates of the auditor were issued to him, being Nos. 3096, 3097, 3098, 3099, for $5,000 each, dated September 24, 1873; Nos. 224, 225, 226, 227, 228, 229, of $5,000 each, dated July 13, 1874; No. 3207, for $5,062, dated October 3, 1874; No. 3100, for $909.46, dated September 24, 1873; No. 222, for $665.80, dated January 13, 1874.

Your petitioner, upon the receipt of the certificates aforesaid, demanded payment of said certificates from the treasurer of the Board of Public Works, who refused and failed to pay the same.

2 Your petitioner avers that said certificates were left with Mandel & Blumenberg as collateral security for the payment of certain notes running for 30, 60, and 90 days, with privilege of renewing for one year, and amounting to $32,000, and he deposited with them as collateral security the certificates, to be returned upon the payment of the notes. Before the maturity of the said notes he called at the former place of business of said Mandel and Blumenberg to pay the notes and take up his certificates, but they had disappeared, and no one there knew when they had left or whither they had gone. Your petitioner could not find them, nor any one representing or acting for them, and could not find the certificates. Your petitioner notified the proper officers of the District of Columbia of the facts, and protested against said officers paying said certificates or issuing bonds thereon to any person or persons. Your petitioner avers that they, Mandel & Blumenberg, disposed of said certificates, without the knowledge or consent of your petitioner, to some person or persons, who, in conjunction with them, are attempting to wrongfully use them and convert them to their own use (or have already done so), and thus deprive your petitioner of his property.

Your petitioner further avers that he has not received any pay for said certificates from said District of Columbia.

Your petitioner therefore prays judgment against said District of Columbia in the sum of eighty-four thousand five hundred dollars $84,500), with interest thereon at six per cent. per annum from the dates of said certificates until paid.

Your petitioner further represents that no assignment or transfer

of said claim or any part thereof or interest therein has been made, and that he is justly entitled to ahe amount therein claimed from the District of Columbia after allowing all just credits and offsets; and that he has at all times borne true allegiance to the Government of the United States; that he has not in any way voluntarily
3 aided or abetted or given encouragement to the rebellion against the Government, and that he believes the facts stated in said petition to be true.

ANDREW GLEESON.

V. B. EDWARDS, *Attorney.*
M. BLAIR,
CHARLES E. CREECY, *of Counsel.*
P. O. address: 611 F street N. W.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

Andrew Gleeson personally appeared before me and made oath, according to law, that no assignment or transfer of said claim or any interest therein has been made, and that he believes he is justly entitled to the amount therein claimed from the District of Columbia, after allowing all just credits and offsets, and that he believes the facts as stated in said petition to be true.

ANDREW GLEESON.

Subscribed and sworn to before me this 9th day of August, A. D. 1880.

[SEAL.] W. S. OFFUTT,
Notary Public.

4 II.—*Traverse. Filed September* 16, 1880.

And now comes the Attorney General, on behalf of the District of Columbia, and answering the petition of the claimant herein denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

THOS. SIMONS,
Ass't Att'y General.

III.—*Motion to Amend Petition, Filed November* 15, 1880, *and Allowance of Same.*

To the honorable the judges of said Court:

Your petitioner respectfully asks leave of the Court to amend his petition by striking out the figures 226 in line 17, page one, of his printed petition.

Nov. 1st, 1880.

V. B. EDWARDS,
Att'y for Claimant.

AT CHAMBERS.

Allowed November 17, 1880.

WM. A. RICHARDSON, *Judge, &c.*

5 IV.—*Motion to Amend Petition, Filed Oct.* 13, 1881, *and Allowance of Same.*

To the honorable the judges of said Court:

Your petitioner asks leave to amend his petition by making the contracts with the Board of Public Works part thereof, also setting out in full the certificates named in said petition, as required by the Court at last term in another case.

October 11, 1881.

Respectfully submitted,

V. B. EDWARDS,
Att'y for Claimant.

AT CHAMBERS.

Allowed October 17, 1881.

WM. A. RICHARDSON, *Judge, &c.*

6 V.—*Amended Petition, with Exhibits A & B. Filed February* 1, 1882.

To the honorable judges of the United States Court of Claims:

Your petitioner respectfully represents—

1. That he entered into written contracts with the Board of Public Works of the District of Columbia, dated July 29, 1873, No. 700, and June 12, 1873, No. 722, marked Exhibits "A" and "B."

2. That petitioner's accounts for work done under said contracts were audited, and petitioner received the following certificates, in the words and figures following, to wit:

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
No. 228. WASHINGTON, D. C, *January* 13, 1874.

I hereby certify that I have this day audited and allowed the account of Andrew Gleason for work on H street N. E. from 1st St. east to Boundary, amounting to five thousand dollars.

$5,000.00.

(Signed) J. C. LAY, *Auditor.*

Endorsed: Andrew Gleason. Nat. B'k. Sherman & Co. 1429 F St. N. W. First Nat. B'k, N. Y.

Across face: Canceled by Board of Audit Sept. 5, 1874.

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
No. 227. WASHINGTON, D. C., *January* 13, 1874.

I hereby certify that I have this day audited and allowed the account of Andrew Gleason for work on H street N. E. from 1st St. east to Boundary, amounting to five thousand dollars.

$5,000.00.

(Signed) J. C. LAY, *Auditor.*

Endorsed: Andrew Gleason.

Across face: Canceled by Board of Audit Sept. 5, 1874.

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
No. 225. WASHINGTON, D. C., *January* 13, 1874.

I hereby certify that I have this day audited and allowed the account of Andrew Gleason for work on H. St. N. E. from 1st St. east to Boundary, amounting to five thousand dollars.

$5,000.00.

(Signed) J. C. LAY, *Auditor.*

Endorsed: Andrew Gleason.

Across face: Canceled by Board of Audit Sept. 5, 1874.

7 OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *January* 13, 1874.

No. 224.

I hereby certify that I have this day audited and allowed the account of Andrew Gleason for work on H street N. E., from 1st St. east to Boundary, amounting to five thousand dollars.

$5,000.00.

(Signed) J. C. LAY, *Auditor.*

Endorsed: For value received the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use. (Signed) Andrew Gleason.

Across face: Canceled by Board of Audit Oct. 7, 1874.

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
No. 222. WASHINGTON, D. C., *January* 13, 1874.

I hereby certify that I have this day audited and allowed the account of Andrew Gleason for amount retained as per schedule, amounting to six hundred and sixty-five .80 dollars.

$665.80.

(Signed) J. C. LAY, *Auditor.*

Across face: Canceled by Board of Audit Oct. 7, 1874.

Across back: Andrew Gleason.

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
No. 3207. WASHINGTON, D. C., *October* 4, 1873.

I hereby certify that I have this day audited and allowed the account of Andrew Gleason for work on 5th street east, from K street to Boundary, amounting to five thousand and sixty-two dollars.

$5,062.00.

(Signed) J. C. LAY, *Auditor.*

Across back: For value received, the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use.

WASHINGTON, D. C., ——, 187–.

Received from James A. Magruder, treasurer of the Board of Public Works of the District of Columbia, —— dollars for ——.

(Signed) ANDREW GLEASON.

Across face: Canceled by Board of Audit Oct. 4, 1874.

8 OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *September* 24, 1873.

No. 3100.

I hereby certify that I have this day audited and allowed the account of Andrew Gleason for work on H street N., from Del. Ave. to 8th street E., amounting to nine hundred and nine⁷.46 dollars.

$909.46.

(Signed) J. C. LAY, *Auditor.*

Across back: For value received, the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use.

WASHINGTON, D. C., ——, 187–.

Received from James A. Magruder, treasurer of the Board of Public Works of the District of Columbia, —— dollars for ——.

(Signed) ANDREW GLEASON.

Across face: Canceled by Board of Audit Oct. 7, 1874.

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,

No. 3099. WASHINGTON, D. C., *September* 24, 1873.

I hereby certify that I have this day audited and allowed the account of Andrew Gleason for work on H street N., from Del. Ave. to 8th street E., amounting to five thousand dollars.

$5,000.00.

(Signed) J. C. LAY, *Auditor.*

Across back: For value received, the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use.

WASHINGTON, D. C., ——, 187–.

Received of James A. Magruder, treasurer of the Board of Public Works of the District of Columbia, —— dollars, for ——.

(Signed) ANDREW GLEASON.

Across face: Canceled by Board of Audit Oct. 7, 1874.

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,

No. 3098. WASHINGTON, D. C., *September* 24, 1873.

I hereby certify that I have this day audited and allowed the account of Andrew Gleason for work or H street north, from Del. Ave. to 8th street east, amounting to five thousand dollars.

$5,000.00.

(Signed) J. C. LAY, *Auditor.*

9 Across back: Washington, D. C., ——, 187–. Received from James A. Magruder, treasurer of the Board of Public Works of the District of Columbia, —— dollars for ——. (Signed) Andrew Gleason.

Across face: Cancelled by Board of Public Works.

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
No. 3097. WASHINGTON, D. C., *September* 24, 1873.

I hereby certify that I have this day audited and allowed the account of Andrew Gleason for work on H street N., from Del. Ave. to 8th street E., amounting to five thousand dollars.
$5,000.00.
(Signed) J. C. LAY, *Auditor.*

Across back: Washington, D. C., ——, 187–. Received from James A. Magruder, treasurer of the Board of Public Works of the District of Columbia, —— dollars for ——. (Signed) Andrew Gleason.

Across face: Canceled by Board of Public Works.

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
No. 3096. WASHINGTON, D. C., *September* 24, 1873.

I hereby certify that I have this day audited and allowed the account of Andrew Gleason for work on H street N., from Del. Ave. to 8th street E., amounting to five thousand dollars.
$5,000.00.
(Signed) J. C. LAY, *Auditor.*

Across back: Washington, D. C., ——, 187–. Received of James A. Magruder, treasurer of the Board of Public Works of the District of Columbia, —— dollars for ——. (Signed) Andrew Gleason.

Across face: Canceled by Board of Public Works.

OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
No. 229. WASHINGTON, D. C., *January* 13, 1874.

I hereby certify that I have this day audited and allowed the account of Andrew Gleason for work on H street north, from 1st street east to Boundary, amounting to five thousand dollars.
$5,000.00.
(Signed) J. C. LAY, *Auditor.*

Across back: For value received, the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use. (Signed) Andrew Gleason.

Across face: Canceled by Board of Audit, Oct. 7, 1874.

10 OFFICE OF AUDITOR BOARD OF PUBLIC WORKS,
WASHINGTON, D. C., *September* 24, 1873.

No. 3095.

I hereby certify that I have this day audited and allowed the account of Andrew Gleason for work on 8th street north from Del. Ave. to 8th street east, amounting to five thousand dollars.

$5,000.00.

(Signed) J. C. LAY, *Auditor.*

Across face: Canceled Aug. 5, 1874, by Board of Audit.

Across back: The Board of Audit, for account of Geo. F. Baker.

WASHINGTON, D. C., ——, 187–.

Received of James A. Magruder, treasurer Board Public Works of the District of Columbia, —— dollars.

ANDREW GLEASON.

Your petitioner demanded payment from the treasurer aforesaid, who refused to pay the same; that the endorsement purporting to be an assignment to N. A. Cowdrey was not endorsed on said certificates while in the possession of your petitioner, neither was the cancelation stamped by the Board of Audit or Board of Public Works.

Your petitioner avers that said certificates and other certificates were left with Mandel & Blumenburg, as collateral security for the payment of certain notes running for 30, 60, and 90 days, with privilege of renewing for one year, and amounting to $30,000, and he deposited with them as collateral security the certificates, to be returned upon the payment of the notes. Before the maturity of the said notes he called at the former place of business of said Mandel & Blumenburg to pay the notes and take up his certificates, but they had disappeared, and no one there knew when they had left or whither they had gone. Your petitioner could not find them, nor any one representing or acting for them, and could not find the certificates. Your petitioner notified the proper officers of the District of Columbia of the fact, and protested against said officers paying said certificates or issuing bonds thereon to any person or persons other than your petitioner, and this notice was given to the officers of said District of Columbia before certain certificates were exchanged by the board of audit.

11 Your petitioner avers that they, Mandel & Blumenburg, disposed of said certificates, without the knowledge or consent of your petitioner, to some person or persons, who, in conjunction with them, are attempting to wrongfully use them and convert them to their own use (or have already done so), and thus deprived your petitioner of his property.

Your petititioner further avers that he has not received any pay for said certificates from said District of Columbia.

Your petitioner therefore prays judgment against said District of Columbia in the sum of eighty-four thousand dollars ($84,000), with interest thereon at 6 per cent. per annum from the dates of said certificates until paid.

Your petitioner further represents that no assignment or transfer (except possibly certificate No. 3095 may have been released) of said claim or any part thereof or interest therein has been made, and that he is justly entitled to the amount therein claimed from the District of Columbia, after allowing all just credits and offsets, and that he has at all times borne true allegiance to the Government of the United States; that he has not in any way voluntarily aided or abetted or given encouragement to the rebellion against the said Government, and that he believes the acts as stated in said petition to be true.

ANDREW GLEASON.

V. B. EDWARDS, *Attorney.*
M. BLAIR,
EPPA HUNTON,
Of Counsel.

STATE OF WEST VIRGINIA, *County of Mineral,* } ss:

Andrew Gleason personally appeared before me and made oath, according to law, that no assignment or transfer of said claim or any interest therein has been made, except as stated in said petition, and that he believes he is justly entitled to the amount therein claimed from the District of Columbia, after allowing all just credits and offsets, and that he believes the facts as stated in said petition to be true.

ANDREW GLEASON.

Subscribed and sworn to before me this 16th day of January, 1882.

[SEAL.] J. M. GRAHAM,
Notary Public.

12 EXHIBIT "A."

No. 700. Sec. F, No. 1220.

This contract, made and concluded this twenty-ninth day of May, in the year one thousand eight hundred and seventy-three, by and between Henry D. Cooke, Alexander R. Shepherd, James A. Magruder, Adolph Cluss, and Henry A. Willard, constituting and composing the Board of Public Works of the District of Columbia, of the first part, and Andrew Gleason, of Washington, D. C., of the second part—

Witnesseth: First. That the said party of the second part has agreed, and by these presents doth agree, with the said party of the first part, for the consideration hereinafter mentioned and contained, and under the penalty expressed in a bond, bearing even date with these presents and hereunto annexed, to furnish at his own proper cost and expense all the necessary materials and labor, and in a good, firm, and substantial manner to grade, set the curb lines, and put down the brick foot pavements in H street N. E., between 1st

street east and Boundary, in the city of Washington, D. C.; also to lay and put down blue rock pavement on the carriage-way of said H street N. E., between said 1st street east and Boundary, in the city of Washington, D. C.; also to take up the blue-stone pavement on F street north, between 7th and 9th streets west, in the city of Washington, D. C., and to haul and remove said blue-stone taken up as aforesaid to the line of said H street N. E., between said 1st street east and Boundary, for use in laying and putting down the blue-stone pavement on said H St. N. E. as aforesaid, the said grading, curbing, and brick and blue-stone paving to be done and completed in accordance with the specifications following, to wit: * * * left out.

Specification for grading streets.
" " setting curb.
" " brick foot pavements.
" " stone block pavements.

Second. It is further agreed that the said party of the first part shall appoint, from time to time, such persons or person as may be by such party deemed proper to inspect the material to be furnished and the work to be done under this contract, and that such persons or person shall have any and all opportunity and privileges which may be necessary to enable them to faithfully make the inspection aforesaid.

13 Third. It is further agreed that the work under this contract shall be commenced immediately.

Fourth. It is further agreed that the said party of the first part may, on notice of the party to the second part, suspend work under this contract, but if not suspended it shall be completed as rapidly as possible from the date fixed for its commencement, and that the said work shall not be sublet without the consent in writing of the said party of the first part, and that any subletting or assignment without such consent work a forfeiture of this contract.

Fifth. It is further agreed that if at any time the party of the first part shall be of the opinion that the said work or any part thereof is unnecessarily delayed, or that the said contractor is wilfully violating any of the conditions or covenants of this contract, or is executing the same in bad faith, all of the work may be discontinued under this contract or any part thereof; and the said party of the first part shall thereupon have the power to place such and so many persons as may be deemed advisable, by contract or otherwise, to work at and complete the work herein described, or any part thereof, and to use such materials as may be found upon the line of said work, or to procure other materials for the completion of the same, and to charge the expense of said labor and materials to the party of the second part, and the expense so charged shall be deducted and paid by the party of the first part out of such moneys as may be then due or may at any time thereafter grow due to the said party of the second part under and by virtue of this agreement, or any part; and in case such expense is less than the sum or sums which would have been payable under this contract if the same had

been completed the party of the second part shall be entitled to receive the difference; and in case such expense shall exceed the last said sum the amount of such excess shall be paid to the party of the first part by the party of the second part.

Sixth. It is further agreed that all loss or damage arising out of the nature of the work to be done under this agreement, or from any unforeseen obstructions or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from incumbrances to individuals, property, or otherwise, on the line of the work or adjacent thereto, shall be sustained by the said contractor; and the said contractor hereby agrees, in the execution of the said work as aforesaid, to keep at all times the said work properly guarded or protected so as to prevent all injuries to persons, travellers, animals, or property, and in the event of any
14 such injury or injuries occurring in consequence of the insufficient guarding or protection of said work as aforesaid the said party of the first part shall retain out of any money or moneys due or to become due said contractor a sum sufficient to cover all damages arising out of said injury or injuries, until the same may be settled at law, or otherwise.

Seventh. It is further agreed that the said party of the second part shall punctually pay the workmen who shall be employed by him on work under this contract in cash current, and not in what is denominated store pay or orders, and that he will from time to time, and as often as may be required by said party of the first part, furnish to said party satisfactory evidence that all persons who have done work or furnished materials have been paid as herein required; and if such evidence is not furnished, such sum or sums as may be necessary for such payment or claims shall be retained by said party of the first part until the said claims shall be fully satisfied.

Eighth. And it is further agreed that partial payments shall be made by the duly authorized financial agent of the said party of the first part on the monthly estimates of the chief engineer of the Board of Public Works aforesaid, and that whenever the said chief engineer aforesaid shall certify, in writing, that the party of the second part completely performed this contract on his part, and shall submit, with said certificate, his estimate of the amount due the party of the second part, then within thirty (30) days, as hereinafter provided, the said party of the second part shall be entitled to receive the full amount due under this contract, deducting therefrom all previous partial payments which may have been made as hereinafter mentioned.

And it is further expressly agreed that no money shall become due and payable under this contract except upon the certificate of said engineer, as hereinbefore provided; and the said party of the second part further agrees that he shall not be entitled to demand or receive payment for any portion of the aforesaid work except in the manner set forth in this agreement; and when each and all of the stipulations hereinbefore mentioned are complied with, and the engineer shall have given his certificate to that effect, a final settlement shall be made in writing between the parties, and the whole

amount found due the party of the second part under this contract shall be paid to him, excepting such sum or sums as may be retained under any provision of this contract: Provided, That partial payments may be made, under direction of the said party of — first part, otherwise than upon the estimates of the said engineer, as provided above, if, in the opinion of the said party of the first part, the vigorous prosecution of the work will be promoted thereby.

Ninth. It is further agreed that if at any time during the period of one year from the completion of the work to be done under this contract any part or parts thereof shall become defective from imperfect or improper material or construction, and in the opinion of the said party of the first part require repair, the said party of the second part will, on being notified thereof, immediately commence and complete the same to the satisfaction of the party of the first part, and in case of failure or neglect of the said parties of the second part so to do the same shall be done under the directions and orders of the party of the first part at the cost and expense of the party of the second part.

Tenth. It is further agreed that the said party of the second part shall receive the following prices as full compensation for furnishing all the materials and labor which may be required in the prosecution of the whole of the work to be done under this agreement, and in all respects completing the same, to wit: Grading, thirty (30) cents for each and every cubic yard of earth, sand, gravel excavated and hauled a distance not exceeding two hundred (200) feet, and one (1) cent per cubic yard for every additional two hundred feet. * * * * * * *

Laying brick foot pavement (new), per square yard, eighty (80) cents; relaying brick foot pavement (old), per square yard, twenty-five (25) cents. * * * * * * *

Provided, That bricks shall be furnished by the board at a price not exceeding eleven dollars and fifty ($11.50) cents per thousand.

Setting curb-stone, 8-inch (new), per lineal foot, forty (40) cents.

Setting curb-stone, 6-inch (new), per lineal foot, thirty (30) cents.

Setting curb-stone, 5-inch (new), per lineal foot, twenty-five (25) cents.

Resetting curb-stones, 4-inch (old), per lineal foot, fifteen (15) cents.

* * * * * * *

Laying and putting down blue-stone pavements, per square yard, one dollar and fifty ($1.50) cents, which shall include two (2) feet of grading.

Taking up and removing old blue-stone, per square yard, twenty (20) cents, which said sums or prices the said party of the first part shall pay to the said party of the second part as herein provided.

Eleventh. And it is further agreed that should any litigation arise in any way connected with the work embraced as aforesaid in this contract from or by reason of any demand or demands, claim or claims, by any person or persons to use within the said Dis-

16 trict of Columbia the improvement or payment or payments contracted for herein to be laid and put down by the said party of the second part, under or by reason of any patent or assignment of patent, either in the form of royalty or damages or in any otherwise, the said party of the second part will indemnify and save harmless the said party of the first part from all said demand or demands, claim or claims, whether arising out of suits or otherwise, and the said party of the first part may, at its option, retain from the amount or amounts due or to become due under this contract to the said party of the second part a sum or sums necessary or sufficient to satisfy or liquidate all of said demands or claims as aforesaid until they shall be amicably adjusted or finally determined at law.

Twelfth. It is further agreed that the measurements shall be made by the engineer of the said party of the first part or his assistants.

Thirteenth. And the said party constituting and composing the Board of Public Works in and for the District of Columbia aforesaid agree with the said party of the second part to perform all the stipulations of this contract obligatory in it, and to pay or cause to be paid to the said party of the second part, or to his heirs, executors, or administrators, in lawful money of the United States, the amount which may be found from time to time due him according to the contract.

* * * * * * *

Fourteenth. It is further agreed that this contract shall be subject to any and all provisions of an act entitled "An act to provide a government for the District of Columbia," approved February 21, 1871, so far as the same shall or may be in any respect applicable to said contract, and also to any law of the District of Columbia pertinent thereto or to any part thereof, as fully as if the same were particularly set forth herein.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

H. D. COOKE, [L. S.]
ALEX. R. SHEPHERD, [L. S.]
JAMES A. MAGRUDER, [L. S.]
ADOLF CLUSS, [L. S.]
H. A. WILLARD, [L. S.]
Board of Public Works of the District of Columbia.
ANDREW GLEASON, *Contractor.*

Signed and sealed in presence of—

W. E. NOTT.
JOHN W. HURLEY.

Exhibit B is the same form as Exhibit A, except as to date, number, kind and price of work.

17 VI.—*Findings of Fact and Conclusion of Law. Filed by the Court April* 14, 1884.

This cause having been heard before the Court of Claims, the Court, upon the evidence, finds the facts to be as follows:

I.

The Board of Public Works of the District of Columbia entered into two written contracts with the claimant, dated June 12, 1873, and July 29, 1873, Nos. 700 and 722, for doing certain works on the streets of Washington city, and on said contracts said board issued to said claimant and delivered to him, by its auditor, certificates of the following form:

II.

No. —. WASHINGTON, D. C., —— —, 18—.

I hereby certify that I have this day audited and allowed the account of —— —— for ——.

—— ——, *Auditor.*

At the time and of the amount and numbered as follows:

No. 222, dated January 13, 1874, for $665.80.
No. 224, dated January 13, 1874, for $5,000.
No. 225, dated January 13, 1874, for $5,000.
No. 227, dated January 13, 1874, for $5,000.
No. 228, dated January 13, 1874, for $5,000.
No. 229, dated January 13, 1874, for $5,000.
No. 3095, dated September 24, 1873, for $5,000.
No. 3096, dated September 24, 1873, for $5,000.
No. 3097, dated September 24, 1873, for $5,000.
No. 3098, dated September 24, 1873, for $5,000.
No. 3099, dated September 24, 1873, for $5,000.
No. 3100, dated September 24, 1873, for $909.46
No. 3207, dated October 4, 1873, for $5,062.

III.

Claimant borrowed $27,000 from Rudolph Blumenburgh on the 13th of January, 1874; gave his note for $30,000, due in sixty days, and deposited as collateral security certificates of the Board of Public Works mentioned in finding IV. He endorsed them in blank. The certificates were to be returned on payment of note. Blumenburgh absconded before maturity of note. Claimant went to
18 his place of business in Washington some fifteen days before maturity of note to arrange as to payment. He found his place closed. Claimant then saw Magruder, treasurer of Board of Public Works; notified him that Blumenburgh had certificates, and protested against payment of certificates; also notified Shepherd, president of board. No printed assignment on certificates

when claimant signed his name on back of same. Magruder promised not to pay certificates if presented; promised he would notify claimant if any of the certificates came in. Blumenburgh returned to Washington in March, 1874. Claimant saw him at that time, but did not inquire of him as to certificates.

IV.

Number, amount, and date of certificates deposited with Blumenburgh by claimant.

No. 222, dated January 13, 1874, for $665.80.
No. 224, dated January 13, 1874, for $5,000.
No. 225, dated January 13, 1874, for $5,000.
No. 227, dated January 13, 1874, for $5,000.
No. 228, dated January 13, 1874, for $5,000.
No. 229, dated January 13, 1874, for $5,000.
No. 3095, dated September 24, 1873, for $5,000.
No. 3099, dated September 24, 1873, for $5,000.
No. 3100, dated September 24, 1873, for $909.46.
No. 3207, dated October 4, 1873, for $5,062.

V.

That certificate No. 222, for $665.80, was indorsed in blank by the claimant and was presented to the Board of Audit by Isaac Prior, and by said board audited, and its certificate, fundable into 3.65 bonds of the District of Columbia, issued to said Prior December 8, 1874.

VI.

Certificates numbered 224, 229, for $5,000 each, bear the following indorsement thereon:

For value received the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use.

ANDREW GLEESON.

By said N. A. Cowdrey, and by said board audited, and its certificates, fundable into District Columbia 3.65 bonds, issued to Cowdrey December 16, 1874.

VII.

That certificates numbered 225, 227, and 228, for $5,000 each, were indorsed in blank by claimant and were presented to the Board of Audit by the First National Bank of the City of New York and by said board audited September 5, 1874, and its certificate, fundable into District Columbia 3.65 bonds, issued to said First National Bank February 27, 1875.

19

VIII.

That the claimant, by his attorney, W. A. Cook, on the 4th day of November, 1874, relinquished any claim that he might have had to certificate No. 3095, for $5,000, and so notified the Board of Audit.

IX.

That on certificate No. 3100 there is the following indorsement across the back:

For value received the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use.

WASHINGTON, D. C., ——, 187–.

Re'd from James A. Magruder, treasurer of the Board of Public Works of the District of Columbia, —— dollars, for ——.

ANDREW GLEASON.

(Across face:) Cancelled by Board of Audit Oct. 7, 1874. Said certificate by said N. A. Cowdrey and by said board audited, and certificate fundable in District of Columbia 3.65 bonds, issued to Cowdrey Dec. 16, 1874.

X.

That on No. 3099 there is the following indorsement across the back:

For value rec'd the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use.

WASHINGTON, D. C., ——, 187–.

Received of James A. Magruder, treasurer of the Board of Public Works of the District of Columbia, —— dollars.

ANDREW GLEASON.

(Across the face:) Cancelled by Board of Audit, by said N. A. Cowdrey, and by said board audited, and its certificate, fundable into District Columbia 3.65 bonds, issued to Cowdrey Dec. 16, 1874.

XI.

No. 3207, presented to the Board of Audit by N. A. Cowdrey. On back of same is an indorsement:

For value rec'd the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use.

WASHINGTON, D. C., ——, 187–.

Rec'd of James A. Magruder, treasurer of the Board of Public Works of the District of Columbia, —— dollars for ——.

ANDREW GLEASON.

Said certificate was audited, and certificate, fundable in bonds of District, 3.65, issued to Cowdrey December 16, 1874.

XII.

Nos. 3096, 3097, 3098, dated September 24, 1873, each for the sum of $5,000, has following indorsements across back:

WASHINGTON, D. C., ——, 187–.

Rec'd of James A. Magruder, treasurer of the Board Public Works of the District of Columbia, —— dollars for ——. W. S. O.

ANDREW GLEASON.

(Across the face:) Cancelled by Board of Public Works.

20 It is agreed between counsel for claimant and the Attorney General that it appears from the books of James A. Magruder, treasurer of the Board of Public Works, that certificates of the auditor of the Board of Public Works Nos. 3096, 3097, and 3098, in $5,000 each, issued in the name of Andrew Gleason, were redeemed by him on or before October 2, 1873, and that said certificates were delivered to him and stamped "Canceled by the Board of Public Works."

XIV.

No. 228. Canceled by Board of Audit September 5, 1874.
No. 227. Canceled by Board of Audit September 5, 1874.
No. 225. Canceled by Board of Audit September 5, 1874.
No. 224. Canceled by Board of Audit October 7, 1874.
No. 222. Canceled by Board of Audit October 7, 1874.
No. 3207. Canceled by Board of Audit October 4, 1874.
No. 3100. Canceled by Board of Audit October 7, 1874.
No. 3099. Canceled by Board of Audit October 7, 1874.
No. 229. Canceled by Board of Audit October 7, 1874.
No. 3095. Canceled by Board of Audit August 5, 1874.

XIV.

That certificates numbered 3096, 3097, and 3098, for $5,000 each, were indorsed by the claimant and presented to and redeemed by the treasurer of the Board of Public Works before any notice of the claimant's alleged interest therein was given to the said treasurer.

XV.

October 13, 1874, claimant filed his bill in equity in the supreme court of the District of Columbia against the Commissioners of the District of Columbia, the Board of Audit, the comptroller of the District of Columbia, the sinking fund Commissioners of the District of Columbia, notifying them that he was the owner and possessor of the certificates set forth in his petition, and on the 23d day of October, 1874, a restraining order was made as follows:

An original bill praying an injunction to restrain the defendants having been filed, it is ordered that the defendants be restrained, as prayed in said bill, and especially that the defendant Blumenburgh be enjoined from receiving any certificates that may be issued by

the defendants Taylor and Broadhead, as well as his agents, attorneys, representatives, and assignees, and that the said Taylor and Broadhead be enjoined from auditing certificates No. 3095, for $5,000; No. 3096, for $5,000; No. 3097, for $5,000; No. 3098, for $5,000; No. 3099, for $5,000; No. 3100 for $907.46; No. 3207, for $5,062; No. 222, for $665.80; No. 223, for $5,000; No. 224, for $5,000; No. 225, for $5,000; No. 226, for $5,000; No. 227, for $5,000; No. 228, for $5,000; No. 229, for $5,000, in favor of said Blumenburgh or any one representing him, and from issuing certificates to said Blumenburgh or his attorney, agents, assignees, or representatives. Hearing is fixed for Thursday, 5th day of November, 1874, at 11 o'clock a. m., until further order. You are hereby restrained as prayed.

21 XVI.

R. W. Taylor and John M. Broadhead, as the Board of Audit, on the 27th October, filed general demurrer to the bill, on which an order was made, as set forth herein:

ANDREW GLEASON
vs.
RUDOLPH BLUMENBERG *et al.* } No. —. Eq. Doc. 14.

And now come R. W. Taylor and John M. Broadhead, served as defendants in said suit as the Board of Audit, and say that the said bill of complaint and the matters and things therein contained and set forth are not sufficient to entitle the said complainant to any answer, relief, or discovery as against these defendants; wherefore they pray judgment whether they shall be compelled to make any further or other answer to said bill and the matters and things therein contained and set forth, and that they be hence dismissed with their reasonable costs in this behalf.

This cause coming on to be heard upon the restraining order passed therein and upon the application for injunction, and being argued and considered thereon, it is, this 6th Nov., 1874, ordered that said restraining order be discharged and the prayer for an injunction be denied as respects the members of the Board of Audit. It is further ordered that defendant Blumenburgh cause his appearance to be entered herein at the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court.

XVII.

The plaintiff demanded payment of this indebtedness from the treasurer of the Board of Public Works of the District of Columbia, but said treasurer failed to pay the same.

That claimant presented no claim for payment to the Board of Audit of these certificates.

XVIII.

Blumenburgh nor any assignee of his has accounted with the claimant for the proceeds of said certificate transferred to him, nor returned the notes of said claimant for which the certificates were transferred as collateral security.

XIX.

It does not appear that the holders of said certificates, to whom they were paid, had knowledge of any equities or claims thereto on the part of the present claimant; such certificates were treated by business and commercial men in the District of Columbia and elsewhere as mercantile securities, and were bought and sold, like negotiable instruments, in the market, and they had a current market value and were paid by the District authorities to the holders.

XX.

An accountant of the board made up a list of what he called "contested certificates," and that list was used by the board; but it does not appear whether or not the certificates now in suit were noted thereon or when it was made up. Upon the foregoing the court determines as conclusion of law that the petition be dismissed.

22 VII.—*Opinion of the Court.*

WELDON, *J.*, delivered the opinion of the Court:

In the year 1873 the claimant entered into two contracts with the Board of Public Works of the District of Columbia for certain work in the city of Washington, and as the work progressed the auditor of said board issued to him certificates of the character set forth in the findings of the court.

The board not being able to pay as the necessities of the claimant required, on the 13th day of January, A. D. 1874, he hypothecated a number of those certificates with Rudolph Blumenburgh, from whom he borrowed the sum of $27,000, giving his note for $30,000, payable in sixty days.

Before the maturity of the note Blumenburgh became involved, closed his place of business, and when claimant sought him he could not be found; and thereupon claimant notified the president and treasurer of the board that he had left certain certificates as collateral with him and requested that they should not be paid.

At the time he pledged the certificates he endorsed them in blank, and in that condition they were presented to the Board of Audit after its organization in the summer of 1874.

The Board of Public Works ceased to have any existence after the organization of the Board of Audit.

On the 13th day of October, 1874, the claimant, for the purpose of enforcing his equity in the certificates, commenced a suit for an injunction and relief in the supreme court of the District of Columbia

against the Board of Audit, the comptroller of the District, the sinking-fund commissioner, and Blumenburgh, alleging that he was the owner of the certificates and in equity entitled to the proceeds, subject to the amount received by him.

Upon the 23d day of October a restraining order was made as prayed for, restraining Blumenburgh from receiving certificates of the Board of Audit and the board from issuing certificates founded on those issued by the Board of Public Works, as described in the bill.

All the certificates sued on in this court were embraced in the bill filed in the supreme court.

The Board of Audit filed a general demurrer, which was sustained, and an order entered on the 6th day of November, A. D. 1874, discharging the restraining order and denying the injunction "as respects the members of the Board of Audit."

As the findings of the court do not show that Nos. 3096, 3097, and 3098 were hypothecated with Blumenburgh, and No. 3095 being eliminated from this case by the eighth finding, there is left for the purpose of this adjudication Nos. 222, 224, 225, 227, 228, 229, 3099, 3100, and 3207, making in the aggregate the sum of $36,637.26, as set forth in finding 4.

The suit of the claimant is based upon the theory that the certificates of the Board of Public Works were not negotiable; that his indorsement was a mere equitable transfer, and it simply conveyed to the assignee a right in the certificates commensurate with the amount of money advanced by Blumenburgh; that persons
23 dealing with the holders of such certificates were bound to know the exact extent of the rights of the holder, and that all payments made by the District to such holder were subject to the reserved legal and equitable rights of the claimant. It is also alleged that the defendant had actual and constructive notice of the character of the assignment.

This suit is for the difference between the amount received by claimant from Blumenburgh and the amount specified in the certificates.

Cases almost identical with the one at bar have been before this Court, and are reported in 16 and 17 C. Cls. R. (Neuchatel, 16; Adams, 17, and Laughlin, 17.)

These cases have been decided by this Court, differing only from this in the fact that in none of them did the claimant commence proceedings to preserve his rights against the District.

Did the pendency of that suit, with the result indicated as to the Board of Audit, change the rights of the parties, so as to distinguish this proceeding from former adjudications?

The Board of Audit had canceled the certificates before the suit was commenced, and hence in that proceeding as to that act there could be no constructive notice to it of the equities of the claimant in the certificates in controversy. Notice to the officers of the Board of Public Works was not in law notice to the Board of Audit.

While the District of Columbia is a unit in its corporate character,

its interests are intrusted to different departments; and if the claimant intended to attach to it the responsibility of notice he ought to have notified the department having jurisdiction of the subject-matter. A verbal notice to the president and treasurer of the Board of Public Works did not operate as constructive notice to the Board of Audit.

By reference to the finding "an accountant of the Board of Audit made up a list of what may be called contested certificates, and that list was used by the board, but it does not appear whether or not the certificates now in suit were noted thereon or when it was made up."

The Board of Audit was organized in June, 1874, some four months before proceedings were commenced in the supreme court and months after the claimant had full knowledge of the fact that Blumenburgh had disposed of the certificates in violation of his obligation. He saw Blumenburgh in the month of March, and did not even mention to him the subject of his claim to the certificates.

The certificates were disposed of by Blumenburgh (and even in the absence of proof to the contrary the court must assume) to innocent parties for value without notice in fact of the restricted character of the assignment. The finding discloses the fact that such certificates were bought and sold in the market as commercial paper, and whatever the law is it was regarded in business circles as negotiable paper.

Is not the claimant justly chargeable with gross negligence? He made an unrestricted assignment of the certificates, permitted the Board of Audit to deal with the holders as though they were the absolute owners, allowed eight months to elapse from the discovery of the fraud complained of before he sought to protect himself by judicial proceedings, having in the outset placed his property in the hands of Blumenburgh, clothed with every indication of ownership and title.

It is a familiar and just principle of law that in cases where
24 one of two innocent parties must sustain a loss from the fraud of a third person he who reposes confidence in such third person and placed in his hands the means of committing such fraud must sustain the loss.

He made a confidant of Blumenburgh, giving him full power from all external indications, to deal with the property as his own, and if the confidence has been violated upon the claimant must fall the consequence of the fraud.

The defendant paid the certificates in good faith, and must be protected against the effect of the claimant's negligence, who is now estopped by his laches.

As was said in the Adam's case it may be said in this case of the claimant:

It does not appear whether or not he went before the board and presented his claims to the certificates or not. If he did present them they were rejected by the board by payment to other parties, and so we have no jurisdiction of the matter, since Congress has

provided that this Court shall have no jurisdiction to consider claims rejected by the Board of Audit. If he did not appear when he might and ought to have done so he is guilty of laches, and must be held to have allowed their payment in that manner without objection. In either case he has no cause of action.

It is not necessary to determine the question whether these instruments were negotiable; there lies at the threshold of this case principles of law effectually disposing of the rights of the parties.

The substance of this controversy was before the Supreme Court of the United States in the case of Cowdrey *v.* Vandenburgh (101 U. S. R., 572). The Court said:

The principle is well settled that when the owner of property in any form clothes another with the apparent title or power of disposition and third parties are thereby induced to deal with him they shall be protected.

Here the complainants could have expressed in their indorsement the purpose of the deposit of the certificates with Blumenburgh, that it was a security for a specified sum of money, and thus have imparted notice to all subsequent purchasers or assignees that the pledge held only a qualified interest in the claim.

Not having limited the assignment to the amount received by the claimant from Blumenburgh, and not having been more diligent in preventing the consummation of the fraud now complained of, we hold that the claimant is estopped from asserting title to the difference between the amount advanced to him by the assignee and the amount of the certificates; and the District must be protected against the payment of money twice for the same thing. It is therefore adjudged that the petition of the claimant be dismissed.

25 VIII.—*Final Judgment of the Court.*

ANDREW GLEESON
vs.
THE DISTRICT OF COLUMBIA. } No. 61.

At a Court of Claims held in the city of Washington on the 14th day of April, A. D. 1884, judgment was ordered to be entered as follows:

The Court, on due consideration of the premises, find for the defendant and do order, adjudge, and decree that the petition of the claimant, the said Andrew Gleeson, be dismissed.

26 IX.—*Application of Claimant for and Allowance of Appeal.*

ANDREW GLEESON
vs.
THE DISTRICT OF COLUMBIA. } No. 61.

From the judgment rendered in the above-entitled cause on the 14th day of April, A. D. 1884, in favor of the defendant, the claimant, by his attorney, on the 2nd day of July, A. D. 1884, makes ap-

plication for and gives notice of an appeal to the Supreme Court of the United States.

July 2, 1884.

V. B. EDWARDS,
Att'y for Claimant.

Allowed:

C. D. DRAKE,
Chief Justice.

27 In the Court of Claims.

ANDREW GLEESON
vs.
THE DISTRICT OF COLUMBIA. } No. 61.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the Court and the conclusion of law thereon, of the opinion of the Court, of the final judgment of the Court, of the application of the claimant for allowance of appeal to the Supreme Court of the United States, and of the allowance of same by Chief Justice Drake.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington city, this 15 day of October, A. D. 1884.

[Seal of Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk C't of Claims.

Endorsed on cover: Court of Claims. No. 216. Andrew Gleason, appellant, *vs.* The District of Columbia. Filed March 23, 1885.

27-133

SUPREME COURT, U.S.
FILED
DEC 5 1887
JAMES H. MCKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

ANDREW GLEASON, *Appellant*,
vs.
THE DISTRICT OF COLUMBIA, *Appellee*. } No. 216.

BRIEF OF COUNSEL FOR APPELLANT.

The appellant brought suit in the Court of Claims, under the act of Congress, approved June 16, 1880, and within the time therein required to recover from the District of Columbia, the sum of $84,500, the difference between the face value and interest and the sum borrowed on the non-negotiable and over-due certificates of the Auditor of the Board of Public Works, which had been given appellant by the Board of Public Works for labor performed and materials furnished upon the streets of Washington City, District of Columbia, under written contracts, and which had been hypothecated by the appellant with one Rudolph Blumenburg, as collateral security for the payment of $27,000 borrowed of said Blumenburg. The Court of Claims decided against the appellant and dismissed his petition.

From this decision of the Court of Claims dismissing the petition, the appellant has appealed to this court.

Statement of the Case.

By the findings by the Court of Claims, the following facts were established.

The Board of Public Works of the District of Columbia entered into two contracts with the claimant, (the appellant,) dated respectively June 12 and July 29, 1873, for doing certain work on the streets of Washington, and on said contracts the said Board, by its auditor, issued thirteen certificates, aggregating $65,727.25. (See findings 1 and 2, page 13.)

That claimant borrowed of one Rudolph Blumenburg, on the thirteenth January, 1874, $27,000, gave his note for $30,000, and deposited as collateral security ten of the above named certificates, aggregating in amount $41,637.26.

These certificates were endorsed in blank and were to be returned on payment of note. Blumenburg absconded before maturity of note; some fifteen days before maturity of note claimant went to Blumenburg's place of business to arrange as to payment of the note; found it closed; claimant then notified the Treasurer and President of the Board of Public Works that Blumenburg had these certificates, and protested against their payment to him; treasurer promised not to pay them and to notify claimant if any of them came in. Blumenburg came to Washington in March, 1874, but claimant made no inquiries about certificates.

These certificates were numbered and dated as follows:

No. 222,	Jan.	13,	1874,	for	.	.	.	.	$	665.80
" 224,	"	"	"	"	.	.	.	.		5,000.00
" 225,	"	"	"	"	.	.	.	.		5,000.00
" 227,	"	"	"	"	.	.	.	.		5,000.00
" 228,	"	"	"	"	.	.	.	.		5,000.00
" 229,	"	"	"	"	.	.	.	.		5,000.00

"	3,095, September 24, 1873, for . .	5,000.00
"	3,099, " " " " . .	5,000.00
"	3,100, " " " " . .	909.46
"	3,207, October 4, 1873, for . . .	5,062.00
	Aggregating, ...	$41,637.26

(See findings 3 and 4, pages 13 and 14.)

Certificate 222 was endorsed in blank, presented to Board of Audit by Isaac Prior, and funded to said Prior on eighth of December, 1875. (See finding 5).

Nos. 224 and 229 were presented to Board of Audit by N. A. Cowdrey, and funded to him December 16, 1874. It had the following printed endorsement to Cowdrey, over claimant's signature, viz:

> "For value received, the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use. Andrew Gleason." (See finding 6).

Nos. 225, 227, and 228, were endorsed in blank and presented to Board by First National Bank, of New York City, and funded February 27, 1875. (See finding 7).

No. 3095 was relinquished to W. A. Cook, and funded to him.

Nos. 3099, 3100, and 3207, were presented to Board by N. A. Cowdrey, and funded December 16, 1874. They had the same assignment as Nos. 224 and 229. They also had on them a blank receipt, in following words:

> "WASHINGTON, D. C., ———, 187—.
> Received from James A. Magruder, Treasurer of Board of Public Works of D. C., ——— dollars.
> ANDREW GLEASON."

(See findings 9, 10, and 11).

Nos. 3096, 3097, and 3098, were endorsed by claimant, and presented to and redeemed by Board of Public Works, before notice of claimant's interest in them was given to treasurer. (See findings 12 and 14).

That on thirteenth of October, 1874, claimant filed his bill in equity in the Supreme Court of D. C., against the Commissioners of the D. C., the Board of Audit, the Comptroller of the D. C., the Sinking Fund Commissioners of D. C. Notifying them that he was the owner and possessor of the certificates set forth in his petition, and on twenty-third October, 1874, a restraining order was issued, by which the defendants were temporarily restrained, and as prayed in the bill, and that defendant, Blumenburgh, be enjoined from receiving any certificates that may be issued by defendants, Taylor and Broadhead, and that said Taylor and Broadhead be enjoined from issuing the certificates, in controversy here, to Blumenburg, his attorney, agents, assignees, or representatives. On demurrer by the Board of Audit, on twenty-seventh of October the injunction as to the Board of Audit was decided (Findings 15 and 16).

The claimant demanded payment of this indebtedness from the Treasurer of Board of Public Works, and was not paid. He did not present his claim for payment to Board of Audit. Neither Blumemburg nor his assignee has accounted with claimant for proceeds of certificates, nor returned the notes of claimant. (Findings 17 and 18).

It does not appear that holders of said certificates, to whom they were paid, had knowledge of any equties or claims of claimant. That these certificates were treated by commercial men in D. C., and elsewhere, as mercantile securieties, were bought and sold like negotiable instruments in the market, and paid by district authorities to holders. (See finding 19).

That accountant of the Board made a list of what he called contested certificates, which was used by the board; but it did not appear that the certificates in suit were quoted thereon. (See finding 20).

Upon these facts, so found, the Court of Claims dismissed the petition of claimant.

Assignment of Errors.

The Court of Claims erred in dismissng the claimant's petition.

Argument.

It is respectfully submitted that on the facts found, and the law, as settled by this Honorable Court, this decision of the Court of Claims is erroneous, and should be reversed.

It is a fact, found, that all the certificates embraced in this suit were the subject-matter of the temporary restraining order, granted against the Board of Public Works and the Board of Audit. That this order was served on the said Boards as early as twenty-seventh October, 1874. That none of the said certificates of Board of Public Works were converted into the fundable certificates of the Board of Audit until December 16, 1874, nearly two months after notice was given by said injunction proceedings of the equities of claimant to these certificates.

The question is, can the Board of Audit, after this notice, by its action, destroy the equity of claimant to them?

The fact found in 19 finding, that these certificates were treated as mercantile securities, and bought and sold like negotiable instruments, cannot effect the law of this case.

The question is, what was the character of these certificates? not what what was supposed to be their character.

The rights of parties are determined by the answer to the first question without any regard to the last.

It will not be pretended they were negotiable paper. They had no element of negotaibility, as will appear from their face, as found in 2 finding. It is a mere certificate of the Auditor of Board of Public Works that the amount of the claimant was audited and allowed for the sum specified therein. The distinction between negotiable and non-negotiable paper is well stated by Wharton in the second volume of his work on Contracts. (§838).

These very certificates were held in Cowdrey *vs.* Vandenburg, (101) U. S. R., 574, to be non-negotiable.

It is deemed useless to multiply authorities on this point. It will not be maintained that these certificates were negotiable or that their legal character could be changed by the manner in which they were regarded and treated by business men of the District of Columbia and elsewhere.

They were non-negotiable and passed by assignment to the several assignees, subject to all the equities of the original owner or payee.

This doctrine is well discussed by Mr. Justice Field on his opinion of the court, rendered in Ins. Co. *vs.* Eldredge, 102 U. S. R., 545.

This court has also held that payment after notice, does not protect the party paying a non-negotiable security.

That payment of a negotiable security after notice, does not protect as to amount paid after notice. Dresser *vs.* Mo. and Iowa Con. Co., 93 U. S. R., 92.

It is maintained that the general doctrine is well established, that in negotiable paper parties are pro-

tected in payment without notice, and in non-negotiable paper assignees take subject to all the equities of assignor even without notice.

But Mr. Justice Weldon in delivering the opinion of Court of Claims in this case, relied on the case of Cowdrey *vs.* Vandenburgh, decided by this court and reported in 101 U. S. R., 572.

By a careful inspection of that case, it will be found that the opinion of Mr. Justice Fields does not authorize the opinion of Court of Claims in this case; that was a suit by Cowdrey, the original owner of one of these certificates, against Blumenburg, to compel a surrender of the certificates, which he had acquired in a manner precisely similar to the mode in which he acquired Gleason's. It appearing that Cowdrey had obtained possession of the certificate, the bill was amended and Cowdrey made a party; in his answer he admitted possession of certificate and averred he had obtained possession in the ordinary course of business as a broker for value, but he did not state what he paid for it. The court did hold there, that the endorsement in blank by Vandenburgh would protect any *bona fide* holder for value, but he did not prove he paid any value for the certificate, and he was considered as holding subject to all equities of Vandenburgh, and Cowdrey was decreed to stand in the shoes of Blumenburg.

In this case there is no proof that the holders of these various certificates paid any value for them. The assignments written over Gleason's name were similar to that averred in Cowdrey's answer. There is nothing therefore in Cowdrey *vs.* Vandenburgh to protect the holders of these certificates without proof of payment of value for them; that was a controversy between the original owner and an assignee.

In this case the Board of Audit, after receiving full

notice that these certificates were fraudulently held by some one, and that they still belonged to Gleason, undertook without inquiry to ignore the claims of Gleason, and recognize the claims of the holders who, as far as the Board of Audit knew, were parties to the fraud of Blumenburg.

The Court of Claims in its opinion also relies on the case of Laughlin *vs.* District of Columbia, decided by the said court and affirmed by this court in 116 U. S. R., 485.

It is submitted that there is no conflict between the principles declared by this court in Laughlin *vs.* District of Columbia and those contended for here.

In that case the certificates of Laughlin, exactly like those of Gleason, were in almost exactly the same way and for similar purposes placed into the hands of Blumenburgh. In both cases Blumenburg disposed of the same to parties who presented them to the Board of Audit.

But Laughlin gave notice of his ownership to the Treasurer of the Board of Public Works. Gleason gave his notice to the Board of Audit. Mr. Chief Justice Waite, in delivering the opinion of the court, held that the Board of Audit was in no sense the Board of Public Works, or its successor; but that it was a new department of the District Government established "to examine and audit for settlement" this class of district debts. He further held that a notice to the Treasurer of the Board of Public Works was in no sense of the word a notice to Board of Audit, and that the latter Board was not affected by notice to the former.

The Chief Justice says, page 489,

> "The only question we have now to decide is whether the letter of June 5, 1874, addressed by the attorney of Laughlin to the Treasurer of Board of Public Works, and placed on file with

> the papers of the Board, makes the district answerable to Laughlin for amount due on the certificates, notwithstanding payment to Cowdrey upon allowance by the Board of Audit. The Court of Claims was of opinion that it did not, and in this we concur."

The question now presented to this court, for the first time, is whether the notice to the Board of Audit, by the suit in question, makes the district liable to Gleason—notwithstanding payment to others upon allowance by Board of Audit after due notice.

The reasoning of the Chief Justice in Laughlin's case is strong authority to hold that the district is liable to Gleason on these certificates. He says, on page 490,

> "If the *certificates had been presented to the treasurer after the letter was delivered to him it would have been his duty to notify Laughlin, before payment*, so that the proper steps might be taken to contest the right of the holder to the money. But when the office of Treasurer of the Board of Public Works was abolished, and the Board of Audit created, an entirely new condition of things arose. The statute authorizing the Board gave notice to Laughlin that he must himself appear before that tribunal, to assert his rights as against the holder of his certificates, *or take some other steps to prevent their payment*, and if he did not his claim against the district would be lost."

Now, in this case, the claimant did all he could do. His whole *bona fide* claim to the certificates was set out in his bill in equity, and the whole of the fraudulent claim of Blumenburg was also given. The Board of Audit was in possession of the whole case. The certificates were described by numbers, date, and amount, so that there could be no trouble in identifying them when presented. He could not, by the allega-

tions of his bill, advise the Board of Audit, who at that time held them. He had no information that Blumenburg had parted from them.

In this condition of affairs, it is maintained that it was the duty of the Board of Audit, when these certificates were presented, to notify Gleason that he might appear and assert his rights to them, and that the failure to do this made the district liable to Gleason.

Justice Weldon, in delivering the opinion of the Court of Claims, on page 19, gives importance to the fact that the Board of Audit had canceled these certificates of Board of Public Works issued to claimant before the suit was brought by him, which was the value of his claim to them.

It is respectfully submitted that this canceling, was not the adjudication of the rights of different claimants, but a declaration of the Board that those certificates were to be retained and new ones of this new Board issued in their stead to the rightful owner.

It was a private mark of the Board of Audit, to prevent these certificates from again going into circulation. It was no part of their duty prescribed by the law of twentieth June, 1874.

By §6 the First and Second Comptroller of the Treasury of the United States were constituted a Board of Audit, "to examine and audit for settlement," among other things "the debt purporting to be evidenced and ascertained by certificates of the Auditor of the Board of Public Works." This Board was required to "issue to each claimant, a certificate signed by each of said Board and countersigned by the Comptroller of the district, stating the amount found to be due to each and on what account."

The duty of this Board was to issue certificates, and it is clear that nothing was done to bind the district

until their certificates were issued. That the cancellation of the old certificates was not even a step towards determining to whom the new should be given, or in what amounts, until the new certificates were issued; it was still in the power and was the duty of this Board of Audit to control them and give them to the proper owners of the old certificates.

Under the doctrine declared by this court in the Laughlin cases, it is respectfully submitted that the judgment of the Court of Claims must be reversed.

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Counsel for Appellant.

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JAMES H. McKENNEY

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

ANDREW GLEASON, APPELLANT,
vs.
THE DISTRICT OF COLUMBIA. } No. 216.

APPEAL FROM THE COURT OF CLAIMS.

COUNTER-STATEMENT AND BRIEF OF ARGUMENT FOR DEFENDANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

ANDREW GLEASON, APPELLANT,
vs.
THE DISTRICT OF COLUMBIA. } No. 216.

APPEAL FROM THE COURT OF CLAIMS.

COUNTER-STATEMENT AND BRIEF OF ARGUMENT FOR DEFENDANT.

COUNTER-STATEMENT.

Andrew Gleason, a contractor with the Board of Public Works of the District of Columbia, on and prior to the 13th of January, 1874, received certain certificates for work done on the streets of Washington City, aggregating the sum of $56,637.26, of the number, dates, and amounts set forth in Finding II (Trans., p. 13).

The certificates were in form as follows:

No. —. WASHINGTON, D. C., ——— ——, 18—.

I hereby certify that I have this day audited and allowed the account of ——— ——— for ———.

———— ————,

Auditor.

On the 13th of January, 1874, claimant borrowed $27,000 from Rudolph Blumenburgh, for which he gave his note at sixty days for $30,000, and deposited as collateral security certain of the certificates received as above stated, which he indorsed in blank, amounting to $41,635.26.

Fifteen thousand dollars (Nos. 3096, 3097, and 3098) of the amount of certificates, received as above stated, were not deposited as collateral for the payment of said note of $30,000, but were presented by the claimant and redeemed by the treasurer of the Board of Public Works. (Findings XII, XIII, XIV, Trans., p. 16.)

Claimant, by his attorney, relinquished any claim to certificate No. 3095 for $5,000 on the 4th of November, 1874. (Finding VIII, Trans., p. 15.)

His claim against Blumenburgh is therefore for the face value of the remaining certificates, amounting to $36,637.26, less $30,000, the amount of his note, or $6,637.26.

Blumenburgh absconded before the maturity of the note. Claimant notified Magruder, treasurer of the Board of Public Works, that Blumenburgh had certificates, and protested against their payment; he also notified the president of the Board.

Blumenburgh returned to Washington in March, 1874, but claimant made no inquiry of him as to certificates.

Certificates of the character of those given to claimant were treated by business and commercial men in the District of Columbia and elsewhere as mercantile securities, and were bought and sold, like negotiable instruments, in the market; they had a current market value, and were paid by the District authorities to the holders. (Finding XIX, Trans., p. 18.)

On and prior to October 7, 1874, the certificates which were deposited as collateral, as above stated, were presented by different parties and canceled by the Board of Audit. (Finding XIV, Trans., p. 16.)

At the time of such presentation, part of the certificates were indorsed in blank, others with regular assignment indorsed. (Trans., 14, 15, 16.)

After cancellation of the certificates given by the Board of Public Works as aforesaid, new certificates for the amounts were given to the holders of the same, fundable into 3.65 bonds of the District of Columbia.

The claimant presented no claim to the Board of Audit on account of these certificates. (Finding XVII, Trans., 17.)

On the 13th of October, 1874, claimant filed his bill in equity in the supreme court of the District of Columbia against the Board of Audit, and, on the 23d of October following, obtained a restraining order. On the 27th of October the restraining order was discharged and the prayer for an injunction denied, as respects the members of the Board of Audit.

BRIEF OF ARGUMENT.

By section 6 of act of 20th of June, 1874, entitled "An act for the government of the District of Columbia and for other purposes," a Board of Audit was created, with power "to examine and audit for settlement all the unfunded or floating debt of the District of Columbia and of the Board of Public Works, hereinafter specified, namely: First, the debt evidenced by sewer certificates; secondly, the debt evidenced by the certificates of the Auditor of the Board of Public Works; * * * and, for the purposes hereinbefore specified, shall have the power to subpœna witnesses, administer oaths, and examine witnesses under oath. * * * Said Board of Audit shall give notice for the presentation of the claims hereinbefore specified in such manner as may be deemed necessary, and no claim shall be audited or allowed unless presented within ninety days after the first publication of such notice" * * * (18 Stat. L., 119.)

Claimant presented no claim for payment to the Board of Audit of the certificates in controversy. (Finding XVII, Trans., p. 17.)

In the case of *Adams* vs. *The United States* (17 C. Cls. R., 361) Adams received similar certificates to those given to Gleason. He hypothecates such certificates with Blumenburgh, with indorsement in blank. He gave notice to the treasurer of the Board of Public Works. It does not appear whether he gave notice to the Board of Audit or whether he resisted the payment of any certificates by the board, or appeared before it to assert any claim of his own

thereto. Judge Richardson says, in delivering the opinion of the court (*ibid.*, 366):

> It was the duty of the claimant to assert and prove his title to the certificates to the board of Audit when or before they were presented for redemption. The findings show that it does not appear whether or not he went before the board and presented his claims to the certificates or not. If he did present them, they were rejected by the board by payment to other parties, and so we have no jurisdiction of the matter since Congress has provided that this court shall have no jurisdiction to consider claims rejected by the Board of Audit. If he did not appear and object to the payment of the certificates to other parties, when he might and ought to have done so, he is guilty of laches, and must be held to have allowed their payment in that manner without objection. In either case he has no cause of action.

In *Netchatel Company's Case* (16 C. Cls. R., 600) it was decided that the indorsement "put it as much in the power of the holder to receive the payment as if he himself had personally presented the certificates and received money for them. The defendant having made payment under such circumstances, the next and final question is whether the District of Columbia shall be condemned to pay the debt a second time? We can see no justification in doing so. If one of two parties must lose through such a payment it must be the one whose act authorized it to be made, and not the one who on the face of the transaction appears to have been innocent of any wrong."

In the case of *Laughlin* vs. *The District of Columbia* (116 U. S., 489) the facts presented in all essential particu-

lars were similar to those in the case at bar. Chief-Justice Waite, in delivering the opinion of the court, says:

> It has been settled by this court that if the owner of certificates of the Auditor of the board of public works, like those now in question, places them in the hands of a third person indorsed in blank, so as to give him apparent authority for their collection, payment by the District to the person so invested with apparent authority, without notice of a want of actual authority, will discharge the debt. (*Cowdry* v. *Vanderburg* 101 U. S. 572; *Looney* v. *District of Columbia* 113 U. S. 258.) The Court of Claims so held in *Adams* v. *District of Columbia* (17 C. Cls. 351, 17 C. Cls. 351), decided at the December Term 1881, which was but a little more than a year after the act giving that court jurisdiction in that class of claims was passed. Such being the law, the only question we have now to consider is, whether the letter of June 5, 1874, addressed by the Attorney of Laughlin to the treasurer of the board of public works and placed on file with the papers of the board, makes the District answerable to Laughlin for the amount due on the certificates, notwithstanding the payment to Cowdry upon the allowance by the board of audit. The Court of Claims was of opinion that it did not and in this we concur.

The point is made by claimant that the case at bar is distinguished from the cases above cited in this, that certain proceedings in equity had been instituted by him in the supreme court of the District of Columbia, in which the Board of Audit was a party defendant. That although the restraining order was discharged, and the prayer for an injunction denied as respects the members of the Board

of Audit, such proceedings operated as a notice to the Board of Audit of the claim of petitioner. It is therefore asserted that it was the duty of the Board of Audit to notify Gleason to appear and assert his claim.

No such duty devolved upon the Board of Audit as claimed. On the contrary, it was the duty of the claimant to appear before the board and under the general notice present and prove his claim. The board had power to "subpœna witnesses, administer oaths, and examine witnesses." In the *Laughlin Case, supra*, it is held—

> The board of audit was in no sense the board of public works or its successor. It was a department of the District government established "to examine and audit for settlement" certain classes of the debt of the District. It was invested for this purpose with *quasi* judicial powers. * * * The board could not begin its work until public notice had been given the creditors of the District to appear and present their claims and it could only act for a limited period. The notice was to all the world and required all who had claims to appear or suffer the consequences, if they kept away. * * * He knew or ought to have known that the holders of the certificates might present them or demand their allowance.

The claimant presented no claim for payment to the board of audit for these certificates. (Trans., 17.)

Mere notice of a claim to the board of audit is not sufficient; the board must not only be notified, the claim must be proven (*Laughlin Case, supra*).

In the case at bar, if the proceedings in equity should be regarded as equivalent to a notice then the notice was

too late. Prior to the institution of such proceedings the certificates of the Auditor of Public Works had been presented to the board of audit by the holders and to the holders, and canceled at the instance of such holders. The claim was by such act virtually decided. As claimant did not appear and object to the payment to other parties he is guilty of laches, and has no cause of action (*Adams Case, supra*).

As declared in the very able opinion of the court below, "the defendant paid the certificates in good faith and must be protected against the effects of claimants' negligence.

That in the case at bar there is no proof that the holders of the various certificates paid value for them is immaterial. Before the board of audit the holders of the certificates were prima facie the owners, and were, as has been declared by the court, properly so recognized. In the case of *Laughlin, supra,* his honor the Chief Justice says:

> As he failed to appear at all, there was nothing for the board to do, but to act upon the evidence which was before it, and decide accordingly. In *Cowdrey* vs. *Vandeburg* (101 U. S. 572) the suit was by Vandeburg the owner of a certificate like those now in question, against Blumenburg and Cowdrey to compel the surrender of the certificate to him, upon allegations, very similar to those which are here made against them. Upon proof of the charge against Blumenburg and a failure by Cowdrey to show that he paid value for the certificate, the degree sought was granted. So here, if Laughlin had appeared before the board and made his showing, it is possible he

might have got the pay instead of Cowdrey, but he failed to do so, and it is now too late to assert his rights against the District.

Claimant failed to appear before the board, and it is now too late for him to assert his rights against the District.

In view of the decisions above cited, it is immaterial as to whether the certificates of the Auditor of Public Works were or were not negotiable. The holder of the certificate was prima facie the owner, and was so recognized by the Board of Audit. It was the duty of the claimant not only to notify such board of his alleged equities, but to appear and prove his claim in issue with the holder of the certificates.

In the case at bar it is found as a fact that it does not appear that the holders of the certificates had any knowledge of the alleged equities of claimant.

Where one of two innocent parties must sustain a loss by the fraud of a third, he who places confidence in the third and places in his hands the means of committing the fraud must sustain the loss.

The certificates may not, from their character, be regarded legally as negotiable, but it is found as a fact in this case that they were in the District of Columbia and elsewhere actually so regarded.

Under such circumstances the depositing of the certificates with Blumenberg was under an implied contract with him that he should treat them as negotiable. They were purchased by the holders as negotiable. It is submitted that, being indorsed in blank, an innocent purchaser was entitled to notice of any equities.

It is insisted that the judgment of the court below should be affirmed.

Respectfully,

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